

AMENDED IN SENATE JULY 2, 2013

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 304

Introduced by Assembly Member Williams

February 12, 2013

An act to amend Sections 14022, 14023, and 14024 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 304, as amended, Williams. Pesticides: toxic air contaminant: control measures.

(1) Existing law requires the Director of Pesticide Regulation, upon completion of an evaluation of a pesticide, to prepare a report on the health effects of any pesticide determined to be a toxic air contaminant that poses a present or potential hazard to human health due to airborne emission from its use, as specified. Existing law requires this report to be made available to the public, as specified. Existing law also requires the director to determine, in consultation with specified agencies, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant. *Existing law defines toxic air contaminant to include those pesticides that have been identified as hazardous air pollutants pursuant to federal law.*

This bill would require the director's written determination regarding control measures for each pesticide and any formal written comments made by consulting agencies be made available to the public. The bill, for each pesticide for which a risk assessment has been completed that has been identified by the director as a toxic air contaminant ~~and based~~

on its listing as a federally identified ~~as a~~ hazardous air pollutant, would require the director, in consultation with the Office of Environmental Health Hazard Assessment, the State Air Resources Board, and the air pollution control or air quality management districts in the affected counties, to determine the need for and appropriate degree of control measures, as specified. The bill would require the director's written determination and any formal written comments made by consulting agencies in regard to control measures for these pesticides to be made available to the public.

(2) Existing law requires, for those pesticides for which a need for control measures has been determined, the director, in consultation with specified agencies, to develop control measures designed to reduce emissions sufficiently so the source will not expose the public to the levels of exposure that may cause or contribute to significant adverse health effects. Existing law requires, after a public hearing, the director to adopt, by regulation, control measures, including application of the best practicable control techniques for those pesticides for which a need has been determined.

This bill would require the director to follow specified consultation procedures and would require the director, within 2 years of the determination of the need for control measures, as specified, to adopt control measures to protect human health. The bill, if the director is unable to adopt control measures to protect human health within 2 years of the determination of the need for control measures, would require the director to submit a specified report to the appropriate committees of the Legislature setting forth the reasons that requirement has not been met and to update that report, as specified. The bill would require, with respect to any pesticide for which a determination of the need for control measures was made before January 1, 2014, that the 2-year period described above commence on January 1, 2014.

(3) This bill also would make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14022 of the Food and Agricultural Code
2 is amended to read:

1 14022. (a) In consultation with the Office of Environmental
2 Health Hazard Assessment and the State Air Resources Board, the
3 director shall evaluate the health effects of pesticides that may be
4 or are emitted into the ambient air of California and that may be
5 determined to be a toxic air contaminant that poses a present or
6 potential hazard to human health. Upon request of the State Air
7 Resources Board, the director shall include a pesticide for
8 evaluation.

9 (b) The director shall complete the evaluation of a pesticide
10 within 90 days after receiving the scientific data specified in
11 subdivision (c) from the Office of Environmental Health Hazard
12 Assessment and the State Air Resources Board. The director may
13 extend the 90-day deadline for a period not to exceed 30 days if
14 the director transmits to the Assembly Committee on Rules and
15 the Senate Committee on Rules, for transmittal to the appropriate
16 standing, select, or joint committee of the Legislature, a statement
17 of reasons for extension of the deadline.

18 (c) In conducting this evaluation, the director shall consider all
19 available scientific data, including, but not limited to, relevant data
20 provided by the Office of Environmental Health Hazard
21 Assessment, the Occupational Safety and Health Division of the
22 Department of Industrial Relations, international and federal health
23 agencies, private industry, academic researchers, and public health
24 and environmental organizations. At the request of the director,
25 the State Air Resources Board shall document the level of airborne
26 emissions and the Office of Environmental Health Hazard
27 Assessment shall provide an assessment of related health effects
28 of pesticides that may be determined to pose a present or potential
29 hazard and each agency shall provide technical assistance to the
30 department as it conducts its evaluation.

31 (d) The director may request, and any person shall provide,
32 information on any substance that is or may be under evaluation
33 and that is manufactured, distributed, or used by the person to
34 whom the request is made, in order to carry out his or her
35 responsibilities pursuant to this chapter. Any person providing
36 information pursuant to this subdivision shall identify, at the
37 request of the director, that portion of the information submitted
38 to the department that is a trade secret and, upon the request of the
39 director, shall provide documentation to support the claim of the
40 trade secret. Information supplied that is a trade secret, as specified

1 in Section 6254.7 of the Government Code, and that is so marked
2 at the time of submission shall not be released to the public by the
3 director, except in accordance with Section 1060 of the Evidence
4 Code and Section 21160 of the Public Resources Code.

5 (e) The director shall give priority to the evaluation and
6 regulation of substances based on factors related to the risk of harm
7 to public health, amount or potential amount of emissions, manner
8 of usage of the pesticide in California, persistence in the
9 atmosphere, and ambient concentrations in the community.

10 SEC. 2. Section 14023 of the Food and Agricultural Code is
11 amended to read:

12 14023. (a) Upon completion of the evaluation conducted
13 pursuant to Section 14022, the director shall, in consultation and
14 with the participation of the Office of Environmental Health Hazard
15 Assessment, prepare a report on the health effects of the pesticide
16 that may be determined to be a toxic air contaminant that poses a
17 present or potential hazard to human health due to airborne
18 emission from its use. The report shall assess the availability and
19 quality of data on health effects, including potency, mode of action,
20 and other relevant biological factors, of the substance. The report
21 shall also contain an estimate of the levels of exposure that may
22 cause or contribute to adverse health effects and, in the case where
23 there is no threshold of significant adverse health effects, the range
24 of risk to humans, resulting from current or anticipated exposure.
25 The report shall include the findings of the Office of Environmental
26 Health Hazard Assessment. The report shall be made available to
27 the public, subject to subdivision (d) of Section 14022.

28 (b) The report prepared pursuant to subdivision (a) shall be
29 formally reviewed by the scientific review panel established
30 according to Section 39670 of the Health and Safety Code. The
31 director shall also make available the data deemed necessary to
32 the scientific review panel, according to departmental procedures
33 established to ensure confidentiality of proprietary information.
34 The panel shall review, as appropriate, the scientific data on which
35 the report is based, the scientific procedures and methods used to
36 support the data, and the conclusions and assessments on which
37 the report is based. The panel shall submit its written findings to
38 the director within 45 days after receiving the report, but it may
39 petition the director for an extension of the deadline, which may
40 not exceed 15 working days.

1 (c) If the scientific review panel determines that the health
2 effects report is seriously deficient, the report shall be returned to
3 the director who shall revise and resubmit the report, within 30
4 days following receipt of the panel's determination, to the panel
5 before development of emission control measures.

6 (d) Within 10 working days following receipt of the findings
7 of the scientific review panel pursuant to subdivision (b), the
8 director shall prepare a hearing notice and a proposed regulation
9 that shall include the proposed determination as to whether a
10 pesticide is a toxic air contaminant. After conducting a public
11 hearing pursuant to Chapter 3.5 (commencing with Section 11340)
12 of Part 1 of Division 3 of Title 2 of the Government Code, the
13 director shall list, by regulation, pesticides determined to be toxic
14 air contaminants.

15 (e) The director shall determine, in consultation with the Office
16 of Environmental Health Hazard Assessment, the State Air
17 Resources Board, and the air pollution control districts or air
18 quality management districts in the affected counties, the need for
19 and appropriate degree of control measures for each pesticide listed
20 as a toxic air contaminant pursuant to subdivision (d). Any person
21 may submit written information for consideration by the director
22 in making determinations on control measures. The director's
23 written determination and any formal written comments made by
24 the consulting agencies shall be made available to the public.

25 (f) For each pesticide identified by the director as a toxic air
26 contaminant, ~~as defined in subdivision (b) of Section 14021, based~~
27 *on its listing as a hazardous air pollutant* pursuant to Section
28 7412 of Title 42 of the United State Code for which a risk
29 assessment has been completed, the director, in consultation with
30 the Office of Environmental Health Hazard Assessment, the State
31 Air Resources Board, and the air pollution control or air quality
32 management districts in the affected counties, shall determine the
33 need for and appropriate degree of control measures. Any person
34 may submit written information for consideration by the director
35 in making determinations on control measures. The director's
36 written determination and any formal written comments made by
37 the consulting agencies shall be made available to the public.

38 SEC. 3. Section 14024 of the Food and Agricultural Code is
39 amended to read:

1 14024. (a) For those pesticides for which a need for control
2 measures has been determined pursuant to subdivision (e) or (f)
3 of Section 14023 and pursuant to provisions of this code, the
4 director, in consultation with the agricultural commissioners, air
5 pollution control districts, and air quality management districts in
6 the affected counties, shall develop control measures designed to
7 reduce emissions sufficiently so that the source will not expose
8 the public to the levels of exposure that may cause or contribute
9 to significant adverse health effects. If no demonstrable safe level
10 or threshold of significant adverse health effects has been
11 established by the director, the control measures shall be designed
12 to adequately prevent an endangerment of public health through
13 the application of best practicable control techniques.

14 (b) Best practicable control techniques may include, but are not
15 limited to, the following:

- 16 (1) Label amendments.
- 17 (2) Applicator training.
- 18 (3) Restrictions on use patterns or locations.
- 19 (4) Changes in application procedures.
- 20 (5) Reclassification as a restricted material.
- 21 (6) Cancellation.

22 (c) (1) The director shall follow the consultation procedures
23 set forth in subdivision (a) and, within two years of the
24 determination of the need for control measures pursuant to
25 subdivision (e) or (f) of Section 14023, shall adopt control
26 measures to protect human health.

27 (2) (A) If the director is unable to adopt control measures to
28 protect human health within two years of the determination of the
29 need for control measures pursuant to paragraph (1), the director
30 shall submit a report to the appropriate committees of the
31 Legislature setting forth the reasons this requirement has not been
32 met.

33 (B) The director shall update the report submitted to the
34 appropriate committees of the Legislature pursuant to subparagraph
35 (A) every two years until the control measures have been adopted.

36 (C) If the registration for the use of a particular pesticide is
37 rescinded or if the director determines there has been a dramatic
38 decline in the use of a particular pesticide so that control measures
39 for that particular pesticide are no longer needed, the director shall
40 include this information in the report submitted to the appropriate

1 committees of the Legislature pursuant to subparagraph (A) and
2 the director's obligations pursuant to paragraph (1) shall be deemed
3 to have been met.

4 (d) For purposes of this section, with respect to any pesticide
5 for which a determination of the need for control measures was
6 made before January 1, 2014, the two-year period described in
7 subdivision (c) shall commence on January 1, 2014.

8 (e) After conducting a public hearing pursuant to Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code, the director shall adopt, by regulation,
11 control measures, including application of the best practicable
12 control techniques enumerated in subdivision (b) or any other best
13 applicable control technique, for those pesticides for which a need
14 has been determined.